

INTERNET  
FORM NLRB-501  
(2-08)UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST EMPLOYER****DO NOT WRITE IN THIS SPACE**

Case

04-CA-264482

Date Filed

8/12/20

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

**1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT**

a. Name of Employer OTG Management PHL LLC		b. Tel. No. (215) 356-1552
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 8500 Essington Ave PMB 500 Philadelphia, PA 19153	e. Employer Representative Deborah Cotterall	g. e-Mail dcotterall@otgexp.com
		h. Number of workers employed 335
i. Type of Establishment (factory, mine, wholesaler, etc.) Food Service	j. Identify principal product or service Food Service & Hospitality	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

**2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)**

The above-named employer failed and refused to bargain in good faith by:

1. On about July 5, 2020, unilaterally changing employee weekly work schedules from 5 eight-hour days to 4 ten-hour days.
2. On about July 7, 2020, unilaterally modifying the collectively bargained grievance process.
3. On about July 9, 2020, unilaterally implementing a tips pool.
4. Failing and refusing to provide material and relevant information requested by the Union, including: (a) on about July 15, copies of communications between managers and bargaining-unit employees regarding recall and return-to-work requirements; and (b) on about July 16, copies of communications between managers and employees and gratuities records relating to the implementation of a tips pool.

**3. Full name of party filing charge (if labor organization, give full name, including local name and number)**

UNITE HERE Local 274

4a. Address (Street and number, city, state, and ZIP code) 1415 N. Broad Street, Suite 219 Philadelphia, PA 19122	4b. Tel. No. 215-440-0245
	4c. Cell No. 267-776-5653
	4d. Fax No. 215-440-0376
	4e. e-Mail erodriguez@unitehere.org

**5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) UNITE HERE!****6. DECLARATION**

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By /s/ Joseph D. Richardson

Joseph D. Richardson, Esq.

(signature of representative or person making charge)

(Print/type name and title or office, if any)

Willig, Williams & Davidson, 1845 Walnut St., 24th FL  
Philadelphia, PA 19103

Address

8/12/2020  
(date)

Tel. No. 215-656-3655

Office, if any, Cell No.

Fax No. 215-561-5135

e-Mail  
jrichardson@wwdlaw.com**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)****PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 4  
100 E Penn Square  
Suite 403  
Philadelphia, PA 19107

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (215)597-7601  
Fax: (215)597-7658



Download  
NLRB  
Mobile App

August 12, 2020

Deborah Cotterall  
OTG Management PHL LLC  
8500 Essington Ave. PMB 500  
Philadelphia, PA 19153

Re: OTG Management PHL, LLC  
Case 04-CA-264482

Dear Ms. Cotterall:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Examiner JOSHUA D. ROSENBERG whose telephone number is (215)597-3719. If this Board agent is not available, you may contact Supervisory Examiner CARA L. FIES-KELLER whose telephone number is (215)597-7636.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board

agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

**Prohibition on Recording Affidavit Interviews:** It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

**Correspondence:** All documents submitted to the Region regarding your case MUST be filed through the Agency's website, [www.nlr.gov](http://www.nlr.gov). This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

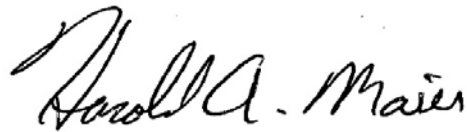
If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov) or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harold A. Maier". The signature is fluid and cursive, with the first name "Harold" and last name "Maier" clearly distinguishable.

HAROLD A. MAIER  
Acting Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 4  
100 E Penn Square  
Suite 403  
Philadelphia, PA 19107

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (215)597-7601  
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Download  
NLRB  
Mobile App

August 12, 2020

UNITE HERE Local 274  
1415 N. Broad Street, Suite 219  
Philadelphia, PA 19122-3325

Re: OTG Management PHL, LLC  
Case 04-CA-264482

Dear Sir or Madam:

The charge that you filed in this case on August 12, 2020 has been docketed as case number 04-CA-264482. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Examiner JOSHUA D. ROSENBERG whose telephone number is (215)597-3719. If this Board agent is not available, you may contact Supervisory Examiner CARA L. FIES-KELLER whose telephone number is (215)597-7636.

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If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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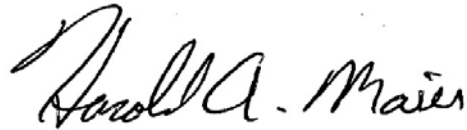
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Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, [www.nlrb.gov](http://www.nlrb.gov) or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harold A. Maier". The signature is fluid and cursive, with the first name "Harold" and last name "Maier" clearly legible.

HAROLD A. MAIER  
Acting Regional Director

cc: Joseph D. Richardson, Esquire  
Willig, Williams & Davidson  
1845 Walnut Street, 24th Floor  
Philadelphia, PA 19103



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION FOUR**

**OTG MANAGEMENT PHL B, LLC**

**and**

**Case 04-CA-264482**

**UNITE HERE LOCAL 274**

**COMPLAINT AND NOTICE OF HEARING**

This Complaint and Notice of Hearing is based on a charge filed by UNITE HERE Local 274 (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that OTG Management PHL B, LLC (Respondent) has violated the Act as described below.

1. The charge in this proceeding was filed by the Union on August 12, 2020, and a copy was served on Respondent by U.S. mail on August 12, 2020.

2. (a) At all material times, Respondent has been a Pennsylvania limited liability company with an office and various places of business at the Philadelphia International Airport in Philadelphia, Pennsylvania (the PHL Facilities), and has been engaged in the operation of several restaurants, bars, and other retail establishments.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), received gross revenues in excess of \$500,000 and purchased and received at the PHL Facilities goods valued in excess of \$5,000 directly from points outside the Commonwealth of Pennsylvania.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, (b) (6), (b) (7)(C) has been (b) (6), (b) (7)(C) and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees of Respondent (the Unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:



All full-time and regular part-time servers, bartenders, cooks, dishwashers, cashiers/baristas, runners, hosts, and porters employed by Respondent at Local Tavern and other food/beverage and news/gifts/retail operations controlled by Respondent at the PHL facilities.

(b) Since a date prior to April 10, 2015 and at all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in a collective-bargaining agreement (the Agreement), which was effective by its terms from April 10, 2015 through April 9, 2018.

(c) At all times since April 10, 2015, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6. (a) About July 5, 2020, Respondent changed Unit employees' schedules from 8-hour shifts to 10-hour shifts.

(b) About July 5, 2020, Respondent changed the tip distribution procedure for Unit employees.

(c) About July 16, 2020, Respondent changed the parties' grievance procedure by requiring the participation of (b) (6), (b) (7)(C) at Step One meetings.

(d) The subjects set forth above in subparagraphs (a), (b), and (c) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(e) Respondent engaged in the conduct described above in subparagraphs (a), (b), and (c) without affording the Union an opportunity to bargain with Respondent with respect to this conduct and/or without first bargaining with the Union to an overall good-faith impasse for a successor collective-bargaining agreement.

7. (a) On (b) (6), (b) (7)(C) 2020, the Union requested, by email to (b) (6), (b) (7)(C), that Respondent furnish the Union, inter alia, with the following information: "copies of any email and text message communication regarding recalls and return to work requirements between bargaining unit members and any supervisors, managers, or members of the HR team between April 1st, 2020 to date."

(b) On (b) (6), (b) (7)(C), 2020, the Union requested, by email to (b) (6), (b) (7)(C), that Respondent furnish the Union, inter alia, with the following information: "any written communications between members of the bargaining unit and OTG managers, supervisors or yourself as it relates to instituting a tip pool."

(c) The information requested by the Union, as described above in subparagraphs (a) and (b) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(d) Since about July 7, 2020, Respondent has failed and refused to furnish the Union with the information requested by it as described above in subparagraph (a).

(e) Since about July 16, 2020, Respondent has failed and refused to furnish the Union with the information requested by it as described above in subparagraph (b).

8. By the conduct described above in paragraphs 6, 7(d) and 7(e), Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

**WHEREFORE**, as part of the remedy for the unfair labor practice alleged above in paragraph 6, the General Counsel seeks an Order requiring that Respondent be required to submit appropriate W-2 forms to the Regional Director to enable the allocation of backpay to the appropriate earnings periods for Social Security Administration (SSA) purposes. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before Friday, November 27, 2020**. Respondent also must serve a copy of the answer on each of the other parties.

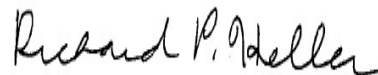
The answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the

other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that at **10:00 a.m. on Tuesday, March 16, 2021**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board via ZOOM/video conference or in a manner and location otherwise ordered by the Regional Director and/or the Administrative Law Judge. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed this 13th day of November, 2020.



---

**RICHARD P. HELLER**

Acting Regional Director, Fourth Region  
National Labor Relations Board

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Case 04-CA-264482

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Deborah Cotterall  
OTG Management PHL LLC  
8500 Essington Avenue, PMB 500  
Philadelphia, PA 19153  
[dcotterall@otgexp.com](mailto:dcotterall@otgexp.com)

Joshua Bernstein, Assoc. General Counsel  
OTG Management, LLC; OTG Management  
PHL, LLC  
1501 Lower State Road, Suite 102  
North Wales, PA 19454  
[jbernstein@otgexp.com](mailto:jbernstein@otgexp.com)

Ian B. Bogaty, Esquire  
58 Service Road, Suite 250  
Melville, NY 11747  
[ian.bogaty@jacksonlewis.com](mailto:ian.bogaty@jacksonlewis.com)

UNITE HERE Local 274  
1415 N. Broad Street, Suite 219  
Philadelphia, PA 19122-3325

Joseph D. Richardson, Esquire  
Willig, Williams & Davidson  
1845 Walnut Street, 24th Floor  
Philadelphia, PA 19103  
[jrichardson@wwdlaw.com](mailto:jrichardson@wwdlaw.com)

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- 
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.
- 

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility

of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- 
- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- 
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- 
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.
- 

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- 
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- 
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION FOUR**

OTG MANAGEMENT PHL B, LLC

and

Case 04-CA-264482

UNITE HERE LOCAL 274

**RESPONDENT’S ANSWER TO THE COMPLAINT AND NOTICE OF HEARING**

Respondent, OTG Management PHL B, LCC (“OTG” or “Respondent”), by and through its attorneys, Jackson Lewis P.C., and pursuant to §102.20 and §102.21 of the National Labor Relations Board’s Rules and Regulations, Series 8, as amended, respectfully answers the Complaint and Notice of Hearing (“Complaint”) as follows:

To the extent the unnumbered introductory paragraph of the Complaint is construed to contain any factual allegations, Respondent denies the allegations.

1.

Respondent lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 1 of the Complaint, except admits that a copy of the charge was served on Respondent.

2(a).

Respondent admits the allegations set forth in paragraph 2(a) of the Complaint, except denies it is a Pennsylvania limited liability company and avers that it is a Delaware limited liability company qualified to do business in Pennsylvania.



2(b).

Respondent admits the allegations set forth in paragraph 2(b) of the Complaint.

2(c).

Respondent admits the allegations set forth in paragraph 2(c) of the Complaint.

3.

Respondent admits the allegations set forth in paragraph 3 of the Complaint.

4.

Respondent admits the allegations set forth in paragraph 4 of the Complaint.

5(a).

Respondent admits the allegations set forth in paragraph 5(a) of the Complaint.

5(b).

Respondent admits the allegations set forth in paragraph 5(b) of the Complaint.

5(c).

Respondent admits the allegations set forth in paragraph 5(c) of the Complaint.

6(a).

Respondent denies the allegations set forth in paragraph 6(a) of the Complaint, but admits that some unit employees had their schedules change from 8-hour shifts to 10-hour shifts in accordance with the controlling collective bargaining agreement (the “CBA”) and past practice.

6(b).

Respondent denies the allegations set forth in paragraph 6(b) of the Complaint.

6(c).

Respondent denies the allegations set forth in paragraph 6(c) of the Complaint.

6(d).

Paragraph 6(d) of the Complaint states a legal conclusion to which no response is required.

6(e).

Paragraph 6(e) of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Respondent denies the allegations set forth in paragraph 6(e) of the Complaint.

7(a).

Respondent admits the allegations set forth in paragraph 7(a) of the Complaint.

7(b).

Respondent admits the allegations set forth in paragraph 7(b) of the Complaint.

7(c).

Paragraph 7(c) of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Respondent denies the allegations set forth in paragraph 7(c) of the Complaint.

7(d).

Respondent denies the allegations set forth in paragraph 7(d) of the Complaint.

7(e).

Respondent denies the allegations set forth in paragraph 7(e) of the Complaint.

8.

Paragraph 8 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Respondent denies the allegations set forth in paragraph 8 of the Complaint.

9.

Paragraph 9 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Respondent denies the allegations set forth in paragraph 9 of the Complaint.

**WHEREFORE**

Respondent denies the allegations set forth in the unnumbered “WHEREFORE” paragraph of the Complaint and further denies that the General Counsel is entitled to any damages or relief as requested.

**AFFIRMATIVE AND OTHER DEFENSES**

Respondent asserts the following affirmative defenses to the allegations of the Complaint:

**AS AND FOR A FIRST DEFENSE**

The Complaint fails to state claims for which relief may be granted.

**AS AND FOR A SECOND DEFENSE**

Some or all of the claims and allegations contained in the Complaint are barred by the doctrine or defenses of waiver, estoppel, laches, unclean hands and bad faith.

**AS AND FOR A THIRD DEFENSE**

The relief sought, in whole or in part, goes beyond the authority provided under the NLRA.

**AS AND FOR A FOURTH DEFENSE**

Respondent’s actions relative to implementing shift changes were in accordance with express contract language and consistent with its statutory duty to maintain the status quo under *NLRB V. Katz*, 369 U.S. 736 (1962).

**AS AND FOR A FIFTH DEFENSE**

Respondent's actions concerning shift changes were consistent with its longstanding past practice relative to scheduling employees that survived the expiration of the contract as part of the status quo and, therefore, was not a violation of Section 8(a)(5) of the Act.

**AS AND FOR A SIXTH DEFENSE**

Any change in Respondent's tip pooling methodology was due to administrative error, was rectified within weeks of the change and, upon information and belief, was rectified upon notice.

**AS AND FOR A SEVENTH DEFENSE**

Respondent has always followed the CBA's grievance procedure, has made no unilateral changes whatsoever and thus, has not violated Section 8(a)(5) of the Act.

**AS AND FOR AN EIGHTH DEFENSE**

Respondent has provided the Union with all relevant information responsive to its information requests.

**AS AND FOR A NINTH DEFENSE**

Any written communication from a bargaining unit employee encompassed by the Union's information request would be in the possession of the bargaining unit employee and thus, the Union.

**AS AND FOR A TENTH DEFENSE**

Any communications between Respondent's employees concerning recalls and return to work requirements that may have occurred are outside the purview of the notice requirement set forth in the recall provision of the CBA and thus, are wholly irrelevant.

**AS AND FOR AN ELEVENTH DEFENSE**

The grievance and arbitration provision of the parties' CBA is not in effect post-expiration of the CBA and thus, the requested information could not be in furtherance of the Union's representation of its membership as it relates to grievance and arbitration.

Respondent reserves the right to amend its Answer or to add additional affirmative defenses.

**WHEREFORE**, Respondent requests that the Complaint be, in all respects, dismissed.

Respectfully submitted this 9<sup>th</sup> day of December, 2020.

JACKSON LEWIS P.C.  
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By: s/ \_\_\_\_\_  
Ian B. Bogaty  
Mary-Ann P. Czak

**Attorney For Respondent, OTG  
Management PHL B, LLC**